

# Legal Assistance Resource Center ❖ of Connecticut, Inc. ❖

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## **S.B. 752 -- Self-service storage liens**

General Law Committee public hearing -- February 7, 2013

Testimony of Raphael L. Podolsky

<b>Recommended Committee action: FURTHER REVIEW</b>
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This bill proposes to "modernize self-storage facility lien laws, including notification and advertising requirements." It appears to be a revised version of H.B. 5088 from the 2012 session of the General Assembly, which proposed the use of electronic notice instead of notice by mail. Unfortunately, in the absence of a drafted version of the bill, it is impossible to take a firm position, other than to say that we are willing to work with the bill's sponsors and the General Law Committee to craft a bill that provides adequate protections for consumers. Any such bill should implement the following two principles:

(1) Notice to the renter of the storage space: The bill should maximize the likelihood that notice will actually be received so that the renter has an opportunity to prevent sale of the goods by paying the bill.

(2) Notice of the auction: The bill should maximize the price obtained at any auction by requiring notice in ways likely to draw the largest number of bidders.

Existing law gives a self-service storage facility a lien on the stored property. To foreclose the lien, the storage facility must notify the property owner by certified or registered mail, return receipt requested, after which it may sell the property at an appropriately advertised auction. Last year's bill would have allowed notice to be given to the property owner by electronic mail, allowed the auction to be advertised electronically, and made an auction per se commercially reasonable if it drew three bidders.

(1) Notice by electronic mail: **We oppose the use of email notice unless the sender receives confirmation that the notice was both received and opened.** Email is a convenient but unreliable way to give notice, especially notice that is time-related. People close email accounts or change email addresses. They do not necessarily know to whom they may have given the old email address. Many do not check their email regularly. Some have email addresses but no computer and must go to a library to check email. In addition, different email systems have different spam and security controls; and it does not follow that the sender will receive a bounce-back notice if the email does not go through. We do not oppose email as an optional additional form of notice, but it is not an adequate substitute for other forms of delivery unless the sender receives confirmation that the email has not only been received by the system to which it is sent but that it has also been opened. Language to that effect was included in the final version of last year's bill.

(2) Commercially reasonable advertising: **We support legislation that requires that advertising for the auction be carried out in a commercially reasonable manner,**

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if that phrase is understood to mean advertising that is designed to generate a maximum resale price. This involves appropriate advertising in a retail market and the making of the property available for bid in a way that encourages higher bidding. Property in self-storage units can be of substantial value and can be worth far more than the debt to the storage facility. From this perspective, we support the supplementation of newspaper advertising with appropriate, documented electronic advertising. We also believe that newspaper advertising should be in classified sections, rather than in legal sections. We do not, however, support eliminating newspaper advertising in the absence of an effective alternate system.

(3) Minimum number of bidders: **We oppose an irrebuttable presumption that three bidders proves commercially reasonable advertising.** Such a provision appeared in the original version of last year's bill. Nevertheless, we do not oppose a rebuttable presumption of commercial reasonableness based upon a substantial number of bidders.